

# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** May 31, 2013

Approved



Date

6/4/13

**COUNCIL DISTRICT: 5**

**SUBJECT: CP12-047. APPEAL OF THE PLANNING COMMISSION'S DECISION TO DENY A CONDITIONAL USE PERMIT REQUEST TO ALLOW THE SALE OF ALCOHOLIC BEVERAGES FOR OFF-SITE CONSUMPTION (TYPE 21 GENERAL) FROM A PROPOSED RETAIL STORE (AJ MINI MARKET) AT AN EXISTING TENANT SPACE ON A 0.53 GROSS ACRE SITE.**

## RECOMMENDATION

The Director of Planning, Building and Code Enforcement recommends that the City Council uphold the Planning Commission's decision and deny the request to allow the sale of alcoholic beverages for off-site consumption (Type 21 General) from a proposed retail store (AJ Mini Market) at an existing tenant space on a 0.53 gross acre site.

## OUTCOME

Should the City Council uphold the Planning Commission's decision, the applicant would not be allowed to sell alcoholic beverages at the subject location.

## EXECUTIVE SUMMARY

The applicant/appellant for the Conditional Use Permit (File No. CP12-047) appealed the Planning Commission's decision to deny the subject application. Planning staff recommends denial of the applicant/appellant's Appeal, based on reasons stated by staff in the original staff report to the Planning Commission, the Planning Commission's discussion, and responses by staff to the applicant/appellant's appeal letter, as explained in the "Analysis" section of this memorandum.

## **BACKGROUND**

On January 24, 2013, David J Elliot, on behalf of the applicant, Ajay Singh representing AJ Mini Market, filed applications for Conditional Use Permit (File No. CP12-047) to allow off-sale of alcoholic beverages (Type 21 General) at a proposed retail store (AJ Mini Market). A concurrent request for the Determination of Public Convenience or Necessity (PCN File No. ABC12-014), filed with the Conditional Use Permit (CUP), was deemed unnecessary because the proposal was neither within a high crime area nor an over-concentrated Census Tract. Consequently, staff advised the applicant to withdraw the PCN request with a full refund of application fee. The proposed retail store will occupy an existing approximately 2,711 square foot tenant space within a 7,821 square foot multi-tenant retail center on a 0.53 gross acre site. The property is zoned CP-Commercial Pedestrian, which allows for a wide range of commercial/retail uses. A Conditional Use Permit is required in the CP-Commercial Pedestrian Zoning District for the sale of alcohol for off-site consumption (Off-sale).

The Planning Commission Staff Report and signed Resolution (attached) provide a full analysis of this project with respect to the Zoning Ordinance findings required to approve a Conditional Use Permit per the applicant's request.

## **Planning Commission Hearing**

Staff Presentation. On May 8, 2013, the Planning Commission held a public hearing to consider the proposed Conditional Use Permit.

The Director of Planning recommended denial of the Conditional Use Permit because the necessary Conditional Use Permit findings for the off-sale of alcoholic beverages could not be made. The proposal was found to be inconsistent with the required Conditional Use Permit findings per Section 20.80.900 of the Title 20 of the San José Municipal Code as the proposed location of the off-sale use would result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a 1,000 foot radius. Apart from becoming the ninth off-sale establishment within a 1,000 foot radius, the proposed off-sale use is situated within 200 feet of residential uses located to the north and west of the subject site. Furthermore, as stated in the Staff Report, the subject site is in the immediate vicinity of two over-concentrated census tracts, although the Census Tract in which it is located is itself not unduly concentrated or within an area of high crime.

Applicant's Testimony. David J. Elliot, representing the applicant, stated that the tenant space has been vacant for a number of years and is among the last spaces to be sought for occupancy in the subject commercial/retail center. He explained that although 150 letters were sent out for a community meeting, only one resident from the neighborhood attended. The resident was supportive of the project, particularly the availability of meat and fresh produce, and the proposed hours of operation of the store until midnight.

Public Testimony. No members of the public were present to speak either for or against the proposal.

Planning Commission Discussion. Commissioner O' Halloran asked whether the selling of alcohol was essential to the success of the applicant's proposal given the existence of eight other businesses that sell alcohol within 1,000 feet of the proposal. Mr. Elliot responded in the affirmative, and indicated that the applicant has several other stores where the off-sale of alcohol amounts to approximately 15% of gross sales.

Staff clarified that the findings required by the Zoning Ordinance for approval of off-sale of alcohol and a Conditional Use Permit cannot be made since there is one other establishment within 500 feet of the proposal and a total of nine establishments (including the proposal) within a 1,000-foot radius. Staff also alluded to the apparent imbalance of proposed shelf space between meat and produce, each of which will be limited to about 3% compared to 15% of total floor area for off-sale of alcohol.

Commissioner Yob commented that there were not enough facts to be able to make the required findings and made the motion to deny as recommended by staff.

Commissioner Kline commented that the staff report stated all of the reasons why the findings required to approve the project could not be made.

The Planning Commission unanimously approved the motion to deny the subject Conditional Use Permit per staff recommendation.

### **Appeal**

On May 20, 2013, an appeal was filed by the applicant, Ajay Singh, representing AJ Mini Mart (see attached Notice of Permit Appeal).

### **ANALYSIS**

The following is an analysis of the specific issues raised by the applicant/appellant in his appeal of the Planning Commission's decision followed by a response from staff:

#### **Appellant's Statement for Appeal**

The applicant/appellant states that the Planning Commission's denial of the off-sale use at the subject location should be overturned because the project is primarily a mini market grocery store with limited alcohol sales, and the community is not opposed to the project:

#### **Planning Staff Response**

A Conditional Use Permit is required for the off-sale use which is a component of the applicant's proposal. The required findings for a Conditional Use Permit could not be made for the proposed off-sale use in this instance as there are a total of eight existing off-sale establishments within a 1000 foot radius and one existing off-sale establishment within 500

foot of the subject site. The off-sale use is within 150 feet of residential uses situated to the north and west of the subject site. The required findings for the Conditional Use Permit, therefore, cannot be made.

### **Conclusion**

Based on the above analysis, including Planning Commission discussion and public testimony, and the previous analysis provided in the attached Planning Commission Staff Report, staff concludes that all of the required findings for issuance of a Conditional Use Permit for the off-sale of alcoholic beverages at the subject location cannot be made. Therefore, staff recommends that the City Council deny the appeal and uphold the Planning Commission's decision to deny the Conditional Use Permit.

### **EVALUATION AND FOLLOW-UP**

Should the City Council uphold the Planning Commission's decision, the applicant would not be allowed to sell alcoholic beverages at the subject location. No further action would be required. A decision to deny the proposed Conditional Use Permit is subject to the off-sale of alcohol only, and does not preclude the opportunity for the applicant to secure building permits for any tenant improvements at the subject location.

### **POLICY ALTERNATIVES**

The City Council Hearing on this appeal is de novo, and the Council can take the following actions in its review of the project:

1. Uphold the Planning Commission's decision to deny the request to allow sale of alcoholic beverages for off-site consumption (Type 21 General) at a proposed retail store (AJ Mini Market), or
2. Approve the project as proposed by the applicant/appellant, or
3. Approve a Conditional Use Permit with other conditions.

### **PUBLIC OUTREACH**

- ☐ **Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing

that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was published, posted on the City's web site, and distributed to the owners and tenants of all properties located within 1,000 feet of the project site. This memorandum and the staff report to the Planning Commission are posted on the City website. Staff has been available to discuss the proposal with members of the public.

One resident from the single family homes situated to the west of the subject site attended the community meeting scheduled on March 25, 2013, and had no concerns regarding the proposed off-sale use.

### **COORDINATION**

Preparation of this memorandum has been coordinated with the City Attorney's office.

### **CEQA**

Under the provisions of Section 15301(a) (Existing Facilities) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. This proposal includes minor interior alterations. No new construction or addition to existing tenant space is proposed.

/s/

JOSEPH HORWEDEL, DIRECTOR  
Planning, Building and Code Enforcement

For questions, please contact Division Manager, Salifu Yakubu, at 408 535-7911

#### Attachments:

- Staff Report to the Planning Commission
- Signed Planning Commission Resolution
- Notice of Permit Appeal

**STAFF REPORT**  
**PLANNING COMMISSION**

**FILE NO.:** CP12-047

**Submitted:** January 24, 2013

**PROJECT DESCRIPTION:** Conditional Use Permit request to allow the sale of alcoholic beverages for off-site consumption (Type 21 General) for a proposed retail store (AJ Mini Market) within an existing tenant space on a 0.53 gross acre site.

Existing Zoning	CP-Commercial Pedestrian
General Plan	Neighborhood/Community Commercial
Council District	5
Annexation Date	Story Number 55 September 13, 2006
Specific Plan	No

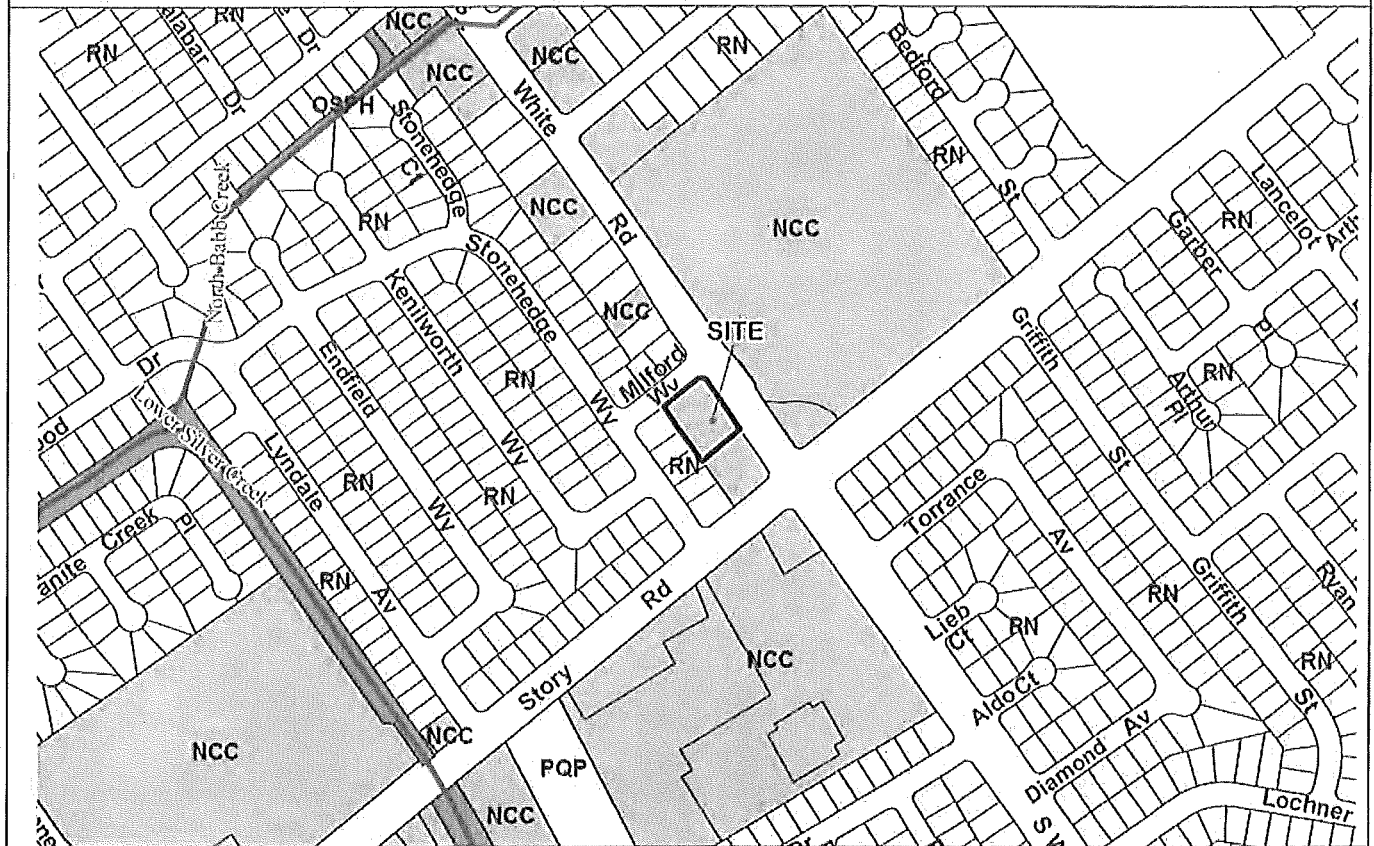
**LOCATION:** West side of White Road, approximately 210 feet northerly of Story Road (1075 South White Road).

**AERIAL MAP**

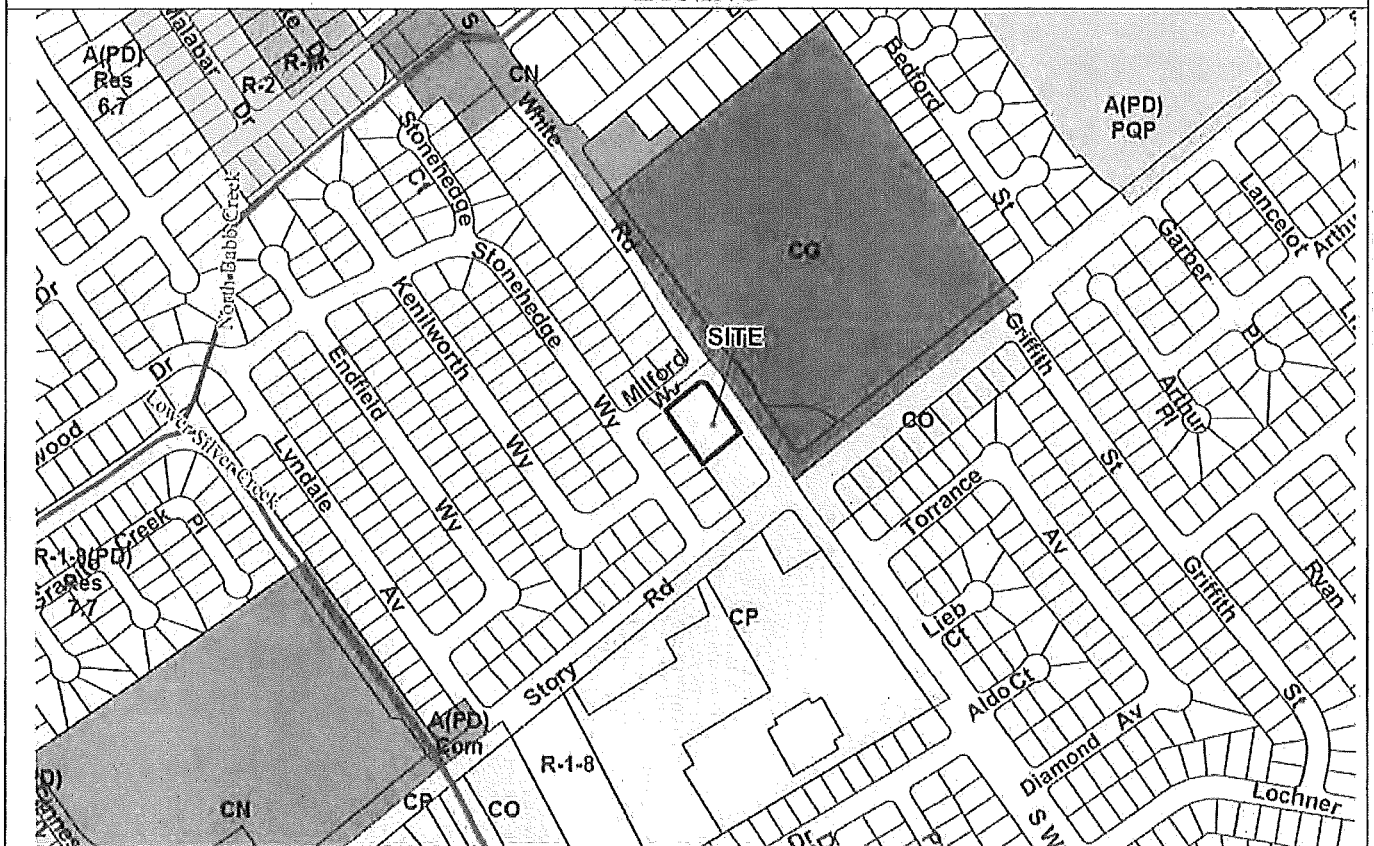
N  
↑



# GENERAL PLAN



# ZONING



## **RECOMMENDATION**

Planning staff recommends that the Planning Commission deny the proposed Conditional Use Permit request to allow the sale of alcoholic beverages for off-site consumption (Type 21 General) for a proposed retail store (AJ Mini Market), within an existing tenant space on a 0.53 gross acre site, for the following reasons:

1. The proposal is inconsistent with the required Conditional Use Permit findings per Section 20.80.900 of the Title 20 of the San Jose Municipal Code, specifically:
  - a. The proposed location of the off-sale of alcoholic beverages use would result in a total of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one-thousand (1,000) foot radius in that the proposed location would add to a total of nine (9) off-sale establishments within a one-thousand (1,000) foot radius.
  - b. The proposed off-sale use is situated and oriented in such a manner as to be incompatible with adjacent residential uses located to the north and west of the subject site within a distance of less than 150 feet.

## **BACKGROUND**

On January 24, 2013, David J Elliot, on behalf of the applicant, Ajay Singh representing AJ Mini Market, filed applications for Conditional Use Permit and Determination of Public Convenience or Necessity (File Numbers CP12-047 and ABC12-014) to allow off-sale of alcoholic beverages (Type 21 General) for a proposed retail store (AJ Mini Market) set to occupy an existing approximately 2,711 square foot tenant space within a 7,821 square foot multi-tenant retail center on a 0.53 gross acre site.

The Zoning Ordinance requires a Conditional Use Permit for the sale of alcoholic beverages for off-site consumption within the CP Commercial Pedestrian Zoning District. As of January 1995, the State of California Legislature implemented AB2897 by amending the Business and Professions Code (Section 23958) to require the Department of Alcohol Beverage Control (ABC) to deny an application for a liquor license "if issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of liquor licenses," unless the City makes a Determination of Public Convenience or Necessity. Undue concentration is defined as follows:

- a) The premises of the proposed license are located in an area that has 20% more reported crimes than the average number of reported crimes for the City as a whole, or
- b) The premises of the proposed license are located in a census tract where the ratio of existing retail on-sale/retail off-sale licenses to population in the census tract exceeds the ratio in the County as a whole.



Although the subject site is in the immediate vicinity of two census tracts (one directly across South White Road to the east) that are over-concentrated with off-sale establishments, the subject census tract, by itself, is not deemed unduly concentrated or located within an area with high crime index. The subject census tract is predominantly occupied by residential uses. For this reason, a Determination of Public Convenience or Necessity (PCN) is not required by the State Department of Alcoholic Beverage Control (ABC) for the proposed off-sale of alcoholic beverages at the subject location. As a result, this Conditional Use Permit will be considered by the Planning Commission without a request for Determination of Public Convenience and Necessity.

The subject site was annexed to the City of San Jose on October 2, 2006 (City Annexation No. Story 55). A Special Use Permit was subsequently approved to demolish two single family residences at the subject location and allow the construction of the afore-mentioned 7,821 square foot multi-tenant retail center with an alternate parking arrangement with an existing restaurant on the adjacent parcel (File Number SP06-082).

The multi-tenant retail building includes six tenant spaces with the subject tenant set to occupy the end unit closest to the intersection of South White Road and Milford Way. The other tenants within the retail center include a dental office, jewellery store, salon, yogurt bar and check cashing. The subject tenant space is presently vacant.

### **PROJECT DESCRIPTION**

The subject site is bounded by residential uses to the west and to the north across Milford Way, retail and parking lot uses to the east across South White Road and to the south across Story Road. The applicant has proposed minor interior improvements within the tenant space. No exterior alterations or site modifications are proposed with this permit. The applicant has indicated that the proposed 2,711 square foot retail store would include the sale of meat and produce, each limited to approximately three percent (3%) of the total floor area, in addition to daily necessity and convenience items. Approximately fifteen percent (15%) of the total floor area will be devoted for the off-sale of alcoholic beverages. The applicant has indicated that the proposed retail store (AJ Mini Market) would operate from 6:00 a.m. to 12:00 a.m. daily.

### **ANALYSIS**

In order for the proposed retail store (AJ Mini Market) to be able to sell alcoholic beverages for off-site consumption at the subject location within the CP Commercial Pedestrian Zoning District, the applicant would require a Conditional Use Permit (CUP). The key issues analyzed for this CUP request include the following: 1) the Envision San José 2040 General Plan; 2) the Zoning Ordinance findings for off-sale of alcoholic beverages; and 3) the California Environmental Quality Act (CEQA).

### General Plan Conformance

The site is designated Neighborhood/Community Commercial on the Envision San José 2040 General Plan Land Use/ Transportation Diagram. The proposed use is consistent with this designation in that it involves commercial uses that can promote economic activity and serve the population of the communities in the neighborhood. However, because of the limited range of goods that would be offered, the proposed retail store will not have most of the desired neighborhood impacts of a typical full-service grocery store for instance, and thus may not achieve some of the key policies for the neighborhood serving commercial uses, such as:

1. LU-5.10 – Neighborhood Serving Commercial: In the review of new locations for the off-sale of alcohol, give preference to establishments that offer a full range of food choices including fresh fruit, vegetables, and meat.

*Although the 2,711 square foot convenience store (AJ Mini Market) proposes to include items that would serve the daily necessities of the community, it will not be able to offer a full range of food choices. Full-service grocery stores within the neighborhood include Mi Pueblo Food Center located at a distance of approximately 550 feet and Safeway located at a distance of 750 feet from the subject tenant space.*

### Zoning Ordinance Requirements for Off-Sale of Alcoholic Beverages

A Conditional Use Permit may be issued pursuant to the applicable provisions of the Zoning Ordinance for the off-sale of any alcoholic beverages only if the decision-making body first makes the following findings applicable to the off-sale of alcoholic beverages:

1. For such use at a location closer than five hundred (500) feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, that the proposed location of the off-sale of alcoholic beverages use would not result in a total of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one-thousand (1,000) foot radius from the proposed location.

*Analysis of Required Finding. There is one other existing business, Rite Aid, located within 500 feet (approximately 480 feet) of the proposed use that is licensed by State ABC to provide alcoholic beverages for off-site consumption. There are seven (7) other existing businesses licensed by State ABC located outside of 500 feet and within 1,000 feet of the proposed use: Santa Fe Mercado Carnicera, Grewal Discount Liquor, Big Lots, Mi Pueblo Food Center, Mt. Pleasant Bottle Shop, CVS Pharmacy and Safeway, that sell alcoholic beverages for off-site consumption. The proposed use together with existing facilities would result in a total of nine (9) such establishments within a 1000-foot radius from the proposed location, and therefore would exceed the total of four (4) establishments that provide alcoholic beverages for off-site consumption within a one-thousand (1,000) foot radius from the proposed location.*

2. For such use at a location closer than five hundred (500) feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, where the proposed location of the off-sale of alcoholic beverages use would result in a total of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one

thousand (1,000) foot radius from the proposed location, that the resulting excess concentration of such uses will not:

- a. Adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area; or
- b. Impair the utility or value of property of other persons located in the vicinity of the area; or
- c. Be detrimental to public health, safety or general welfare.

*Analysis of Required Finding. As stated above, the proposed use will result in an undue concentration of a total of nine (9) off-sale establishments, which far exceeds the threshold of four (4) off-sale establishments within a one thousand (1,000) foot radius of the proposed location. The proposed off-sale of alcohol at the subject location, which is bounded on two sides by residential uses (to the west and across the street to the north), would be detrimental to the utility and livability of the adjoining residential properties. Therefore, the Planning Commission cannot make this required finding for approval of a Conditional Use Permit for off-sale of alcoholic beverages.*

3. For such a use at a location closer than five hundred (500) feet from any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university, or closer than one hundred fifty (150) feet from any residentially zoned property, that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential, child care center, public park, social service agency, residential care facility, residential service facility and/or school use.

*Analysis of Required Finding. The subject use is located within 150 feet of a residentially zoned property. The closest residential parcel to the north across Milford Way is approximately 60 feet away and the residential parcel to the west is approximately 80 feet away across the parking lot to the rear of the subject tenant space. The subject tenant space is not accessed from South White Road but the entrance is located on the west facade of the subject retail building and oriented towards the rear parking lot that abuts the rear yards of single family residences. The minimum walking distance from the closest residence to the entrance of the tenant space is approximately 90 feet. Given these facts, the finding can be made that the building in which the off-sale use is proposed, is situated and oriented in such a manner that the use would adversely affect residential, child care center, public park, social service agency, residential care facility, residential service facility and/or school uses.*

Based on the above analysis of the three required findings for off-sale of alcohol, an additional off-sale of alcohol establishment would contribute to the existing concentration of establishments by having two (2) off-sale establishments within 500 feet and nine (9) establishments within 1000 feet of the subject site. As the proposed off-sale use is located within 150 feet of residentially-zoned property, this use would adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area, or be detrimental to public health, safety or general welfare due to the close proximity of the above stated uses.

Required Findings under the Zoning Ordinance for all Conditional Use Permits/Amendments

To approve a Conditional Use Permit the Planning Commission must make findings that include the following:

1. The proposed use at the location requested will not:
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of the property of other persons located within the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare.
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.

*Analysis of Required Findings. The proposed use would occupy a vacant retail building with adequate existing parking, landscaping and trash and loading facilities. The proposed use would be situated among other commercial uses and provided with existing infrastructure and easy access. However, the proposed use is in close proximity to residential uses on two sides of the tenant space. The proposed off-sale area would comprise approximately fifteen percent (15 %) of the total floor area. There are two other full-service grocery markets, Mi Pueblo Food Center and Safeway, which include the off-sale of alcoholic beverages, conveniently located and accessed by the surrounding neighborhood. Based on the above analysis, staff concludes that the above general findings related to the Conditional Use Permit cannot be made.*

Environmental Review (CEQA)

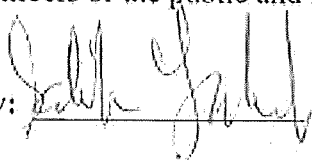
Under the provisions of Section 15301(a) (Existing Facilities) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. This proposal includes minor interior alterations. No new construction or addition to existing tenant space is proposed.

## CONCLUSION

Based on the above analysis, staff recommends that the Planning Commission deny this request since all of the required findings for the issuance of a Conditional Use Permit for the off-sale of alcoholic beverages cannot be made. The proposed retail store (AJ Mini Market) can presently operate at the subject location by right without the inclusion of off-sale of alcoholic beverages. No prior permits have been approved at the subject retail center to allow off-sale of alcoholic beverages. The neighborhood has access to two full-service grocery stores; Mi Pueblo Food Center and Safeway are within a 1,000 foot radius of the subject site, which include the off-sale of alcoholic beverages.

## PUBLIC OUTREACH/INTEREST

The property owners and occupants within a 500-foot radius were sent public hearing notices for the Planning Commission hearing. One resident from the single family homes situated to the west of the subject site attended the community meeting scheduled on March 25, 2013 and had no concerns regarding the proposed off-sale use. The property owners and occupants within a 500-foot radius were sent notices for the community meeting. This staff report has been posted on the City's web site. Signage has been posted at the site to inform the public about the proposal. Staff has been available to discuss the proposal with interested members of the public and has not received any additional comments on the proposal.

**Project Manager:** Aparna Ankola **Approved by:**  **Date:** April 29, 2013

Owner/Applicant	Attachments:
<u>Owner:</u> Dela Torre Properties, LLC 911 McLaughlin Avenue San Jose, CA 95122  <u>Applicant:</u> Ajay Singh 5138 Monterey Rd #G San Jose, CA 95111	Draft Resolution Police Memorandum

## RESOLUTION NO. 13-

A Resolution of the Planning Commission of the City of San José denying, subject to conditions, a Conditional Use Permit request to allow the sale of alcoholic beverages for off-site consumption (Type 21 General) for a proposed retail store (AJ Mini Market) within an existing tenant space on a 0.53 gross acre site.

### FILE NO. CP12-047

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSÉ:

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on January 24, 2013, an application (File No. CP12-047) was filed for a Conditional Use Permit to allow the sale of alcoholic beverages for off-site consumption (Type 21 General) for a proposed retail store (AJ Mini Market) within an existing tenant space on a 0.53 gross acre site (hereinafter referred to as "subject property"), situated in the CP Commercial Pedestrian Zoning District, located on the west side of White Road, approximately 210 feet northerly of Story Road (1075 South White Road); and

WHEREAS, the subject property is all that real property described in Exhibit "A." which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said application on March 27, 2013, notice of which was duly given; and

WHEREAS, at said hearing, the Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing this Planning Commission received in evidence a development plan for the subject property entitled, "Tenant Improvement, De La Torre Building, 1075 South White Road, San Jose CA 95116" dated August 6, 2012, and said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San Jose Municipal Code and the rules of this Planning Commission;

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSE AS FOLLOWS:

After considering evidence presented at the Public Hearing, the Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The 0.53 gross acre subject site is located on the west side of White Road, approximately 210 feet northerly of Story Road (1075 South White Road).
2. The subject site has a designation of Neighborhood/Community Commercial on the Envision San José 2040 General Plan Land Use/Transportation Diagram.
3. The subject site is located within the CP-Commercial Pedestrian Zoning District.
4. This Conditional Use Permit request is to allow off-sale of alcoholic beverages (Type 21 General) at a proposed convenience store (AJ Mini Market) within an existing 2,711 square foot tenant space.
5. In a memorandum dated February 25, 2013, the Police Department has stated that they are neutral to the issuance of a Conditional Use Permit to allow off-sale of alcoholic beverages at the subject location.
6. The subject site is located in San Jose Police beat W3. The reported crime statistics as defined by the B&P Section 23958.4(c) are not over 20% crime index.
7. The subject site is located in a census tract in which the ratio of off-sale licenses to population does not exceed the ratio of off-sale retail licenses to population in the county.
8. A Determination of Public Convenience or Necessity is not required by the State Department of Alcoholic Beverage Control (ABC) pursuant to San Jose Municipal Code, Title 6.
9. The subject site is located directly across and within one hundred foot of census tracts that are over-concentrated with off-sale establishments
10. The subject census tract is predominantly occupied by residential uses.
11. The subject site is located within the East Valley/ 680 Communities Strong Neighborhoods Initiative area.
12. The subject site is bounded by residential uses to the west and to the north across Milford Way; retail and parking lot uses to the east across South White Road and to the south across Story Road.
13. The subject site was annexed to the City of San Jose on October 2, 2006 City Annexation No. Story 55.
14. A Special Use Permit allowed the construction of 7,821 square feet of retail building and included an alternate parking arrangement with an existing restaurant on the adjacent parcel with associated site improvements (File Number SP06-082).
15. The subject retail building includes six tenant spaces with the subject tenant set to occupy the end unit at the intersection of South White Road and Milford Way.

16. The subject tenant space is presently vacant.
17. The other tenants within the retail center include a dental office, jewellery store, salon, yogurt bar and check cashing.
18. The area proposed for off-sale of alcoholic beverages is approximately five percent (5%) of the total floor area.
19. The subject establishment can presently operate on the subject site, excluding the off-sale of alcoholic beverages, within the CP-Commercial Neighborhood by right from 6:00 a.m. until 12:00 a.m.
20. The proposed hours of operation at the subject tenant space are from 6:00 a.m. to 12:00 a.m. daily.
21. The subject use is located within 150 feet of a residentially zoned property.
22. The closest residential parcel to the north across Milford Way is approximately 60 feet away and the residential parcel to the west is approximately 80 feet away across the parking lot to the rear of the subject tenant space.
23. The entrance to the subject tenant space is located to the rear on the west façade of the subject retail building.
24. The entrance is oriented towards the rear parking lot that abuts the rear yards of single family residences.
25. The minimum walking distance from the closest residence to the entrance of the tenant space is approximately 90 feet.
26. The applicant has proposed minor interior improvements within the tenant space.
27. No exterior alterations or site modifications are proposed with this permit
28. The subject site has adequate parking for the proposed use.
29. The subject tenant space is located within five hundred (500) feet of another retail establishment, Rite Aid which includes the sale of alcoholic beverages for off-site consumption.
30. Eight (8) existing off-sale facilities are located within 1,000 feet of proposed subject use. The proposed use, together with existing facilities, would result in a total of more than four such establishments within a 1,000-foot radius.
31. Community meeting notices were sent to neighbors within a 500 foot radius.
32. A community meeting conducted on March 25, 2013 had one neighbor in attendance, from the single family residential uses to the west of the subject site.
33. The neighbor did not express any concerns regarding the off-sale of alcohol within the neighborhood.
34. Staff has not received any additional comments from the neighborhood.
35. On-site signage was posted at the subject tenant location.



36. Under the provisions of Section 15301(a), Existing Facilities, of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project has been found to be exempt from environmental review.

The Planning Commission finds, based on the analysis of the above facts in regard to the Zoning Ordinance requirement for off-sale of alcohol that:

1. This use is closer than five hundred (500) feet from another use involving the off-sale of alcoholic beverages, situate either within or outside the City, and the proposed location of the off-sale of alcoholic beverages use would result in a total of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one thousand (1,000) foot radius from the proposed location.
2. The use is not located closer than five hundred (500) feet any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university.
3. The use is closer than one hundred fifty (150) feet from residentially-zoned property and the publicly accessible entrances to the subject site is approximately 90 feet from the nearest residence across Milford Way. Therefore, the building in which the proposed use is to be located is situated and oriented in such a manner that it would adversely affect such residential uses.

Further, based on an analysis of the above facts and findings, the Planning Commission concludes and finds that:

1. The proposed project is consistent with the adopted Envision San José 2040 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project does not comply with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project is not compatible with surrounding land uses.

Finally, based upon the above-stated findings, the Planning Commission finds that:

1. The proposed uses at the location requested will:
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features in this title, or as otherwise required in order to integrate said use with the uses in the surrounding areas; and

3. The proposed site is adequately served:

- a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
- b. By other public or private service for facilities as are requested.

Based on all of the above findings for the Conditional Use Permit application, this proposal for off-sale of any type of alcoholic beverages is hereby denied.

**DENIED** this 8<sup>th</sup> day of May 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

EDESA BIT-BADAL  
Chairperson

ATTEST:

---

JOSEPH HORWEDEL  
Director of Planning Building & Code Enforcement  
Planning Commission Secretary

**NOTICE TO PARTIES**

*The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.*



# Memorandum

**TO:** Aparna Ankola  
Planning Department

**FROM:** Ofc. Christine Zarate #3165  
San Jose Police Vice Unit

**SUBJECT:** CP12-047  
1075 S White Rd.

**DATE:** February 25, 2013

---

Approved

Date

---

I have received your request for input regarding an existing convenience store, located at 1075 S White Rd, San Jose, Ca. The convenience store is seeking a Conditional Use Permit to allow off-sale of alcohol.

Per Business and Professions (B&P) Code Section 23958, the State of California Department of Alcohol Beverage Control shall deny an ABC Application for an ABC License if the issuance of that license would tend to create a law enforcement problem or if it would result in or add to an undue concentration of ABC Licenses, as described in B&P Sections 23958.4 (a)(1) and 23958.4(a)(2). A location can be unduly concentrated because of its criminal statistics and/or it's proximity to other ABC Licenses. ABC can issue the license per B&P Sections 23958.4 (b)(1), and 23958.4 (b)(2) if the local governing body determines that the public convenience or necessity would be served. The City of San Jose Planning Department or the Planning Commission are the delegated authorities to grant these exceptions.

The location is currently in the East Valley /680 Community Strong Neighborhood Initiative area.

The 1075 S White Rd. is located in San Jose Police Beat W3. The reported crime statistics as defined by B&P Section 23958.4(c) **are not** over the 20% crime index thus the location **is not** considered unduly concentrated per B&P Section 23958.4 (a)(1).

### Police Beat Crime Statistics

Beat	Index Crimes	Arrests	Total	20% Above Average
W3 (2011)	137	282	419	No
City Average	172	311	483	

Department of Alcohol Beverage Control (ABC) records indicate that 1075 S White Rd. is in census tract 5040.01. Pursuant to B&P Section 23958.4 (a)(2), the ratio of off-sale retail licenses population in census tract 5040.01 **does not** exceed the ratio of off-sale retail licenses retail licenses to population in the county in which the applicant premises are located.

**Authorized and Current ABC Licenses in Census Tract 5040.01**

Census Tract	Authorized ABC Licenses as of May 2012		Current ABC Licenses as of February 2013		Unduly Concentrated	
	On - Sale	Off - Sale	On - Sale	Off - Sale	On - Sale	Off - Sale
5040.01	5	2	6	2	Yes	No

The San Jose Police Department is **neutral** to the issuance of a Conditional Use Permit to allow off-sale of alcohol at an existing convenience store.

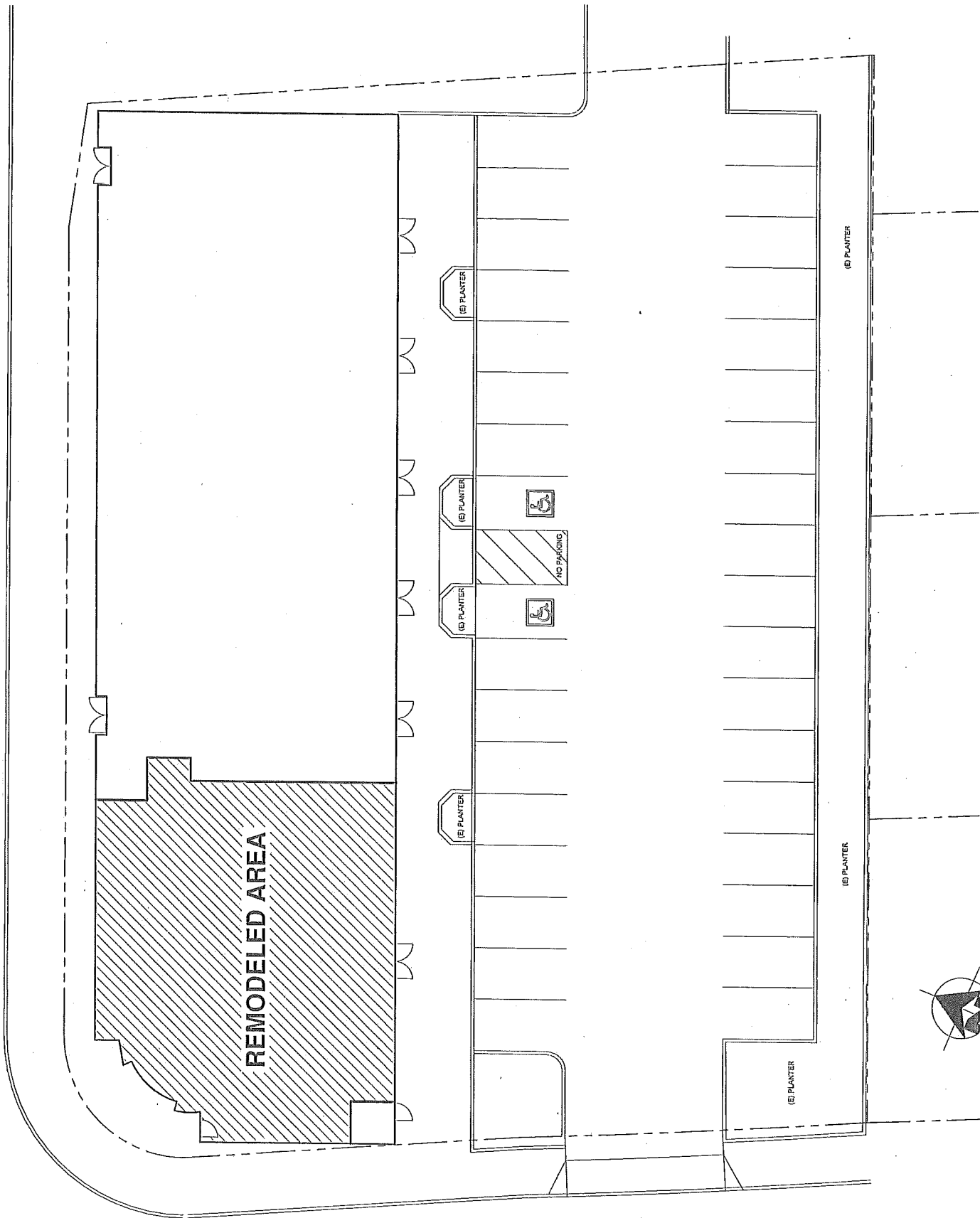
Please feel free to contact me at 277-4322 if you have any questions.

Ofc. Christine Zarate #3165  
Administrative Officer  
Special Investigations/Vice

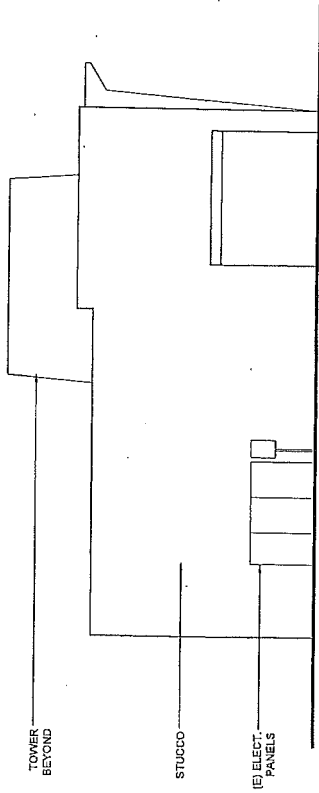
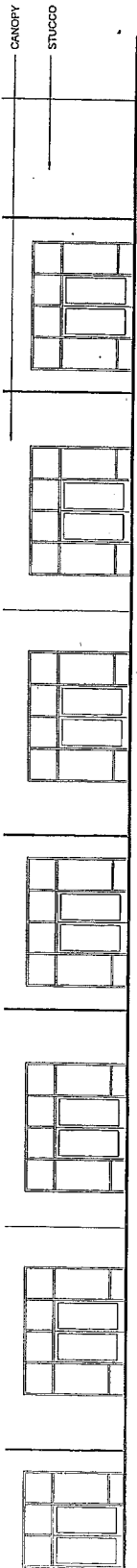
20	16	12	8	4
19	15	11	7	3
18	14	10	6	2

SOUTH WHITE RD.

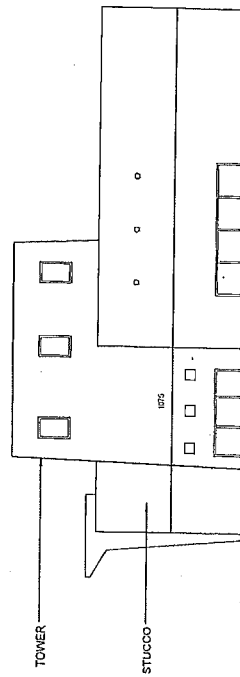
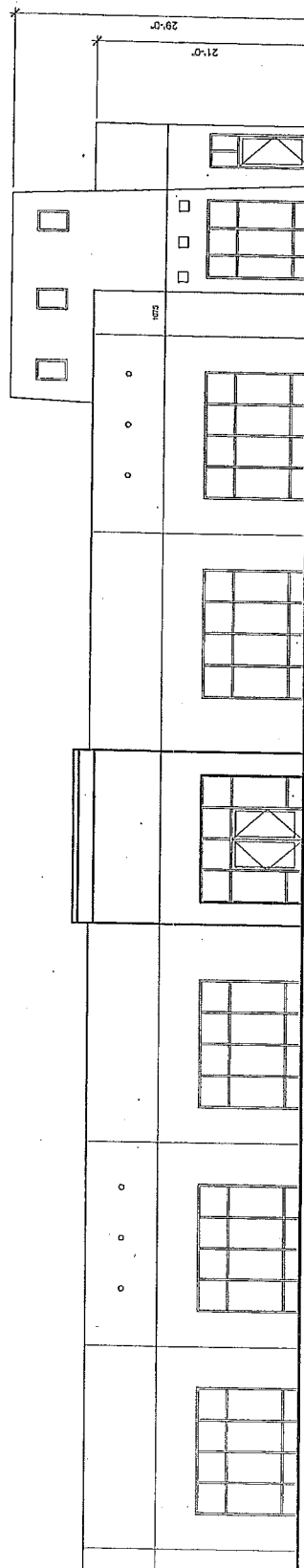
MILFORD WAY.







(B) EXTERIOR ELEVATION -





## RESOLUTION NO. 13-030

A Resolution of the Planning Commission of the City of San José denying, subject to conditions, a Conditional Use Permit request to allow the sale of alcoholic beverages for off-site consumption (Type 21 General) for a proposed retail store (AJ Mini Market) within an existing tenant space on a 0.53 gross acre site.

### FILE NO. CP12-047

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSÉ:

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on January 24, 2013, an application (File No. CP12-047) was filed for a Conditional Use Permit to allow the sale of alcoholic beverages for off-site consumption (Type 21 General) for a proposed retail store (AJ Mini Market) within an existing tenant space on a 0.53 gross acre site (hereinafter referred to as "subject property"), situated in the CP Commercial Pedestrian Zoning District, located on the west side of White Road, approximately 210 feet northerly of Story Road (1075 South White Road); and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said application on March 27, 2013, notice of which was duly given; and

WHEREAS, at said hearing, the Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing this Planning Commission received in evidence a development plan for the subject property entitled, "Tenant Improvement, De La Torre Building, 1075 South White Road, San Jose CA 95116" dated August 6, 2012, and said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San Jose Municipal Code and the rules of this Planning Commission;

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSE AS FOLLOWS:

After considering evidence presented at the Public Hearing, the Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The 0.53 gross acre subject site is located on the west side of White Road, approximately 210 feet northerly of Story Road (1075 South White Road).
2. The subject site has a designation of Neighborhood/Community Commercial on the Envision San José 2040 General Plan Land Use/Transportation Diagram.
3. The subject site is located within the CP-Commercial Pedestrian Zoning District.
4. This Conditional Use Permit request is to allow off-sale of alcoholic beverages (Type 21 General) at a proposed convenience store (AJ Mini Market) within an existing 2,711 square foot tenant space.
5. In a memorandum dated February 25, 2013, the Police Department has stated that they are neutral to the issuance of a Conditional Use Permit to allow off-sale of alcoholic beverages at the subject location.
6. The subject site is located in San Jose Police beat W3. The reported crime statistics as defined by the B&P Section 23958.4(c) are not over 20% crime index.
7. The subject site is located in a census tract in which the ratio of off-sale licenses to population does not exceed the ratio of off-sale retail licenses to population in the county.
8. A Determination of Public Convenience or Necessity is not required by the State Department of Alcoholic Beverage Control (ABC) pursuant to San Jose Municipal Code, Title 6.
9. The subject site is located directly across and within one hundred foot of census tracts that are over-concentrated with off-sale establishments.
10. The subject census tract is predominantly occupied by residential uses.
11. The subject site is located within the East Valley/ 680 Communities Strong Neighborhoods Initiative area.
12. The subject site is bounded by residential uses to the west and to the north across Milford Way; retail and parking lot uses to the east across South White Road and to the south across Story Road.
13. The subject site was annexed to the City of San Jose on October 2, 2006 City Annexation No. Story 55.
14. A Special Use Permit allowed the construction of 7,821 square feet of retail building and included an alternate parking arrangement with an existing restaurant on the adjacent parcel with associated site improvements (File Number SP06-082).
15. The subject retail building includes six tenant spaces with the subject tenant set to occupy the end unit at the intersection of South White Road and Milford Way.

16. The subject tenant space is presently vacant.
17. The other tenants within the retail center include a dental office, jewellery store, salon, yogurt bar and check cashing.
18. The area proposed for off-sale of alcoholic beverages is approximately fifteen percent (15%) of the total floor area.
19. The subject establishment can presently operate on the subject site, excluding the off-sale of alcoholic beverages, within the CP-Commercial Neighborhood by right from 6:00 a.m. until 12:00 a.m.
20. The proposed hours of operation at the subject tenant space are from 6:00 a.m. to 12:00 a.m. daily.
21. The subject use is located within 150 feet of a residentially zoned property.
22. The closest residential parcel to the north across Milford Way is approximately 60 feet away and the residential parcel to the west is approximately 80 feet away across the parking lot to the rear of the subject tenant space.
23. The entrance to the subject tenant space is located to the rear on the west façade of the subject retail building.
24. The entrance is oriented towards the rear parking lot that abuts the rear yards of single family residences.
25. The minimum walking distance from the closest residence to the entrance of the tenant space is approximately 90 feet.
26. The applicant has proposed minor interior improvements within the tenant space.
27. No exterior alterations or site modifications are proposed with this permit.
28. The subject site has adequate parking for the proposed use.
29. The subject tenant space is located within five hundred (500) feet of another retail establishment, Rite Aid which includes the sale of alcoholic beverages for off-site consumption.
30. Eight (8) existing off-sale facilities are located within 1,000 feet of proposed subject use. The proposed use, together with existing facilities, would result in a total of more than four such establishments within a 1,000-foot radius.
31. Community meeting notices were sent to neighbors within a 500 foot radius.
32. A community meeting conducted on March 25, 2013 had one neighbor in attendance, from the single family residential uses to the west of the subject site.
33. The neighbor did not express any concerns regarding the off-sale of alcohol within the neighborhood.
34. Staff has not received any additional comments from the neighborhood.
35. On-site signage was posted at the subject tenant location.

36. Under the provisions of Section 15301(a), Existing Facilities, of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project has been found to be exempt from environmental review.

The Planning Commission finds, based on the analysis of the above facts in regard to the Zoning Ordinance requirement for off-sale of alcohol that:

1. This use is closer than five hundred (500) feet from another use involving the off-sale of alcoholic beverages, situate either within or outside the City, and the proposed location of the off-sale of alcoholic beverages use would result in a total of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one thousand (1,000) foot radius from the proposed location.
2. The use is not located closer than five hundred (500) feet any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university.
3. The use is closer than one hundred fifty (150) feet from residentially-zoned property and the publicly accessible entrances to the subject site is approximately 90 feet from the nearest residence across Milford Way. Therefore, the building in which the proposed use is to be located is situated and oriented in such a manner that it would adversely affect such residential uses.

Further, based on an analysis of the above facts and findings, the Planning Commission concludes and finds that:

1. The proposed project is consistent with the adopted Envision San José 2040 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project does not comply with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project is not compatible with surrounding land uses.

Finally, based upon the above-stated findings, the Planning Commission finds that:

1. The proposed uses at the location requested will:
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features in this title, or as otherwise required in order to integrate said use with the uses in the surrounding areas; and

3. The proposed site is adequately served:
- By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - By other public or private service for facilities as are requested.

Based on all of the above findings for the Conditional Use Permit application, this proposal for off-sale of any type of alcoholic beverages is hereby denied.


**DENIED** this 8<sup>th</sup> day of May 2013, by the following vote:

AYES: B&T-BADAL, ABELITE, CAHAN, KAMKAR, KLINE, O'HALLORAN, YOB


NOES: NONE

ABSENT: NONE

ABSTAIN: NONE

  
EDESA BIT-BADAL  
Chairperson

ATTEST:

  
For JOSEPH HORWEDEL  
Director of Planning Building & Code Enforcement  
Planning Commission Secretary

#### NOTICE TO PARTIES

*The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.*

## DESCRIPTION

Page 1

Policy No. 982026 MVM

All that certain Real Property in the Unincorporated Area, County of Santa Clara, State of California, described as follows:

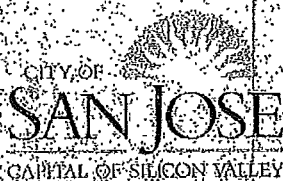
BEGINNING at a point on the Southwesterly line of White Road, distant thereon North 36° 10' West 160 feet from the point of intersection of the said Southwesterly line of White Road with the Northwesternly line of Story Road; running thence North 36° 10' West along the said Southwesterly line of White Road, 75 feet; thence leaving said last named line and running South 49° 31' West and parallel with the said Northwesternly line of Story Road, 145 feet; running thence South 36° 10' East and parallel with the said Southwesterly line of White Road, 75 feet; running thence North 49° 31' East and parallel with the said Northwesternly line of said Story Road, 145 feet to the point of beginning.

BEING a part of that certain 50.07 acre tract deeded to Edward Ford by Deed dated February 4, 1904 in Book 276 of Deeds, at page 224.

EXCEPTING THEREFROM that portion thereof as conveyed to the County of Santa Clara, recorded November 26, 1979 in Book E964, page 714 of Official Records, described as follows:

BEING a portion of the 50.07 acre tract described within the Deed recorded in Book 276 of Deeds at Page 224, records of said County, more particularly described as follows:

BEGINNING at a point on the Southwesterly right-of-way line of White Road (60.00 feet wide) distant N 36° 1' 21" W (N 36° 10' W by Deed) 160.00 feet from its intersection with the Northwesternly right-of-way line of Story Road (60 feet wide), said point being the POINT OF BEGINNING of the description of the parcel of land within the Deed, recorded in Book 1565 of Official Records of said County at Page 145; thence along said right-of-way line of White Road as shown on the Record of Survey recorded in Book 417 of Maps at pages 9 and 10, Santa Clara County Records, N 36° 1' 21" W, 75.00 feet to the most Northerly corner of the parcel of land last mentioned above; thence along the Northwesternly line of said parcel S 49° 37' 54" W, (S 49° 31' W by Deed) 12.04 feet to a point in a line parallel with and distant 12.00 feet, measured at right angles, from the said right-of-way line of White Road; thence along said parallel line S. 36° 1' 21" E, 55.00 feet; thence S 27° 35' 8" E, 20.45 feet to a point in the Southeasterly line of said parcel; thence along said Southeasterly line N 49° 37' 54" E (N 49° 31' E by Deed) 15.04 feet to the POINT OF BEGINNING.



## CITY OF SAN JOSE

Planning, Building and Code Enforcement  
200 East Santa Clara Street  
San Jose, CA 95113-1905  
tel (408) 535-3555 fax (408) 292-6055  
Website: www.sanjoseca.gov/planning

## NOTICE OF PERMIT APPEAL

## TO BE COMPLETED BY PLANNING STAFF

FILE NUMBER <b>CP12-047</b>	RECEIPT # <b>822580</b>
PROJECT LOCATION <b>1075 South White Rd San Jose, CA 95127</b>	AMOUNT <b>\$232</b>
	DATE <b>05/20/2013</b>
	BY <b>AA</b>

## TO BE COMPLETED BY PERSON FILING APPEAL

PLEASE REFER TO PERMIT APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE. THIS FORM MUST BE ACCOMPANIED BY THE APPROPRIATE FILING FEE.

THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE PROPERTY WHICH IS LOCATED AT:

**1075 South White Rd, San Jose, CA 95127**

REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.)

**Project is primarily A mini market Grocery Store with limited Alcohol. Public meeting held No opposition. No opposition on any public meeting.**

## PERSON FILING APPEAL

NAME <b>ATAY SINGH</b>	DAYTIME TELEPHONE <b>(408) 307-8201</b>
ADDRESS <b>1243 MONTCOURSE LN SAN JOSE</b>	CITY <b>CA</b>
SIGNATURE <b>Atay Singh</b>	STATE <b>CA</b>
	ZIP CODE <b>95131</b>
	DATE <b>5/20/13</b>
RELATIONSHIP TO SUBJECT SITE (e.g., adjacent property owner, property owner within one thousand (1,000) feet)	

## CONTACT PERSON

(IF DIFFERENT FROM PERSON FILING APPEAL)

NAME			
ADDRESS		CITY	STATE
DAYTIME TELEPHONE		FAX NUMBER	E-MAIL ADDRESS

## PROPERTY OWNER

NAME <b>DeLa Torre Properties</b>	DATE
ADDRESS <b>911 Melanville Ave</b>	CITY <b>San Jose</b>
	STATE <b>CA</b>
	ZIP CODE <b>95122</b>

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.